

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009SF1027
	)	
<b>SHERRY BARKER</b>	)	ALS NO.: 09-0510
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman and Yonnie Stroger presiding, upon Sherry Barker's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009SF1027; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioners' Request, and the Respondent's response to the Petitioners' Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (1) The Respondent's dismissal of Count A of the Petitioner's Charge is **VACATED**, and Count A of the Petitioner's charge is **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to that Count, and for further proceedings in accordance with this Order and the Act.
- (2) The Respondent's dismissal of Counts B through G of the Petitioner's Charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

In support of which determination the Commission states the following findings of fact and reasons:

1. On October 7, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in her charge that her former employer Memorial Medical Center ("Employer"), subjected her to sexual harassment (Count A), suspended her (Count B), issued her a written warning (Count C), and issued her a note to her file (Count D), in retaliation for opposing unlawful discrimination, issued her a note to her file because of her Learning Disability (Count E), and discharged her in retaliation for having opposed unlawful discrimination (Count F) and because of her disability, Learning Disability (Count G), in violation of Section 2-102(A), 2-102(D) and 6-101(A) of the Illinois Human Rights Act (the "Act").

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

2. On August 13, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On September 17, 2009, the Petitioner timely filed her Request.
3. The Petitioner was a former Housekeeping Aide I for the Employer. The Petitioner alleges that from January 2008, until September 29, 2008, the Employer subjected her to sexual harassment in that John U., a Housekeeping Aide II, stated that he wished she'd "bend over", came into her work area uninvited, called her a "bitch" and looked at her suggestively while licking his lips.
4. The Petitioner alleges that she opposed unlawful discrimination on August 13, 2008, when she complained to Crystal Webb ("Webb"), Employee Relations Representative, and Ed Curtis ("Curtis"), Company President, that John U. was sexually harassing her.
5. On August 13, 2008, the Employer gave the Petitioner a three-day suspension by way of a written warning. The Employer stated that the suspension was due to the Petitioner being out of her work area repeatedly without authorization and for reading magazines while on duty. In a rebuttal to the suspension and written warning, the Petitioner reported the alleged sexual harassment to Webb.
6. The Petitioner's job description states that she was responsible for pulling trash from utility rooms, chutes, and other designated areas. On August 25, September 5, and September 8, 2008, Gary Bussen ("Bussen"), Out-Building Supervisor, documented that the Petitioner was not emptying the trash. Bussen and Mike Allen ("Allen"), Environmental Services Operation Manager, held a Performance Standard Conference with the Petitioner on September 12, 2008, and placed a note in her file documenting the conference. The note stated that further instances *will result* in corrective actions.
7. On September 26, 2008, Allen and Bussen informed the Petitioner that she was being transferred to another facility at the Employer. The Petitioner requested Curtis's telephone number and email address. The Petitioner informed Allen that she was not pleased that she was being moved and that she wanted to. . . "make sure Curtis was aware of the harassment to she was undergoing". . .
8. Bussen called Allen and informed Allen that the Petitioner was requesting Curtis's contact information and was being insubordinate by constantly leaving her work area. Allen and Bussen attempted a second meeting with the Petitioner. However, Bussen and Allen allege the Petitioner took out a camera phone and began taking pictures of the Employers facility, including areas occupied by patients.
9. On September 26, 2008, Allen and Bussen called security to have the Petitioner removed from the facility because Petitioner was violating HIPPA privacy laws. Allen met with Webb concerning the September 26, 2008 incident, and recommended that the Petitioner be discharged. On September 29, 2008, Allen called the Petitioner and advised she was being discharged for violation of hospital policy, for insubordination, and for misconduct.

## **CONCLUSION**

### **Count A**

In Response to the Petitioner's Request, the Respondent does not oppose the Petitioner's Request as to Count A. The Respondent asks that the Commission vacate its dismissal of Count A and enter a finding of Substantial Evidence as to Count A, and remand Count A to the Respondent for further proceedings.

### **Counts B through G**

The Commission's review of the Respondent's investigation file leads it to conclude the Respondent properly dismissed Counts B through G of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

As to Count B and C, the Petitioner has failed to establish a *prima facie* case of retaliation. In order to do so, the Petitioner had to show: (1) she engaged in a protected activity; (2) the Employer committed an adverse action against her; and (3) a casual connection existed between the protected activity and the adverse action. Welch v. Hoeh, Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3<sup>rd</sup> dist. 2000).

In this case the Employer took adverse action against the Petitioner before she opposed unlawful discrimination. The Petitioner did not report the alleged sexual harassment until she had already received the written warning and three-day suspension. As such, there is no casual connection between the adverse action and the adverse action taken against the Petitioner.

As to Count D, wherein the Petitioner alleges the Employer retaliated against her by placing a note regarding the Performance Standard Conference in her file on September 12, 2008, the Petitioner failed to show there was an adverse action taken against her. The Employer placed a note to memorialize the Performance Standard conference. The note stated "further instances *will result* in a corrective action." There is no substantial evidence that the note itself caused the Petitioner to be subjected to any disciplinary or other adverse action.

In Count E the Petitioner alleges the September 12, 2008, note was also placed in her file because she is a disabled person. Assuming the Petitioner is disabled within the meaning of the Act, there is no substantial evidence the Employer was aware of the Petitioner's disability on September 12, 2008. Rather, the file shows the Petitioner informed the Employer of her Learning Disability 10 days later, on September 22, 2008. Furthermore, as previously discussed, the placement of the note in the Petitioner's file did not constitute a harmful or adverse action; hence there is no substantial evidence an adverse action was taken against the Petitioner because of her disability. See Illinois Department of Corrections v. Illinois Human Rights Commission, 298 Ill.App.3d 536, 540, 699 N.E.2d 143, 145-6 (3<sup>rd</sup> Dist. 1998), *citing* Truger v. Department of Human Rights, 293 Ill.App.3d 851, 859, 688 N.E.2d 1209, 1213 (1997).

Finally, as to Count F and G, there is no substantial evidence the Employer's stated reason for discharging the Petitioner was a pretext for either retaliation or unlawful disability

discrimination. The evidence shows the Petitioner took pictures of the Employer's facility and of areas occupied by patients on September 26, 2008. The Employer considered this incident a violation of HIPPA privacy laws, and found the Petitioner to have violated hospital policy, in addition to being insubordinate. The Employer may take its action for good reason, bad reason, reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason. See Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428, ALS No. 7321 (May 6, 1996), *citing* Homes and Board of County Commissioner, Morgan County, 26 Ill HRC Rep. 63 (1986). In this case, there is no substantial evidence the Employer acted unlawfully in discharging the Petitioner.

The Petitioner in her Request does not offer any additional evidence to warrant a reversal of the Respondent's original determination as to Counts B-G. She states in her Request that she adopts all documents she submitted to the Respondent in support of her Request. She further argues that the Employer's evidence contains misstatements. However, she does not provide evidence to support this allegation.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Department's dismissal of Counts B-G of the charge was not in accordance with the Act. The Complainant's Request is not persuasive as to those Counts.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1) The Respondent's dismissal of Count A of the Petitioner's Charge is **VACATED**, and Count A of the Petitioner's charge is **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to that Count, and for further proceedings in accordance with this Order and the Act; and,
- (2) The dismissal of Counts B through G of the Petitioner's charge is hereby **SUSTAINED**.

**This Order is not yet final and appealable.**

STATE OF ILLINOIS                     )  
   )  
HUMAN RIGHTS COMMISSION        )

Entered this 10<sup>th</sup> day of March 2010

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Yonnie Stroger